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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,295	10/19/2001	Noam Fraenkel	MERCURY.140A2	1983
20995	7590	10/23/2006	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			WON, MICHAEL YOUNG	
			ART UNIT	PAPER NUMBER
			2155	

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/057,295	Applicant(s) FRAENKEL ET AL.	
	Examiner Michael Y. Won	Art Unit 2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/05/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the Appeal Brief filed on August 8, 2006, PROSECUTION IS HEREBY REOPENED. A new non-final rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31. A new notice of appeal fee and appeal brief fee will not be required for applicant to appeal from the new Office action. Any appeal brief filed on or after September 13, 2004 must comply with 37 CFR 41.37.

2. Claims 1-39 have been examined and are pending with this action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-9, 11-13, 15-22, 25-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Maccabee et al. (US 6,108,700 A).

INDEPENDENT:

As per **claim 1**, Maccabee teaches a method of monitoring the operation of a deployed web site system, the method comprising:

(a) monitoring response times (see col.3, lines 25-30: "performance (response time)") of a web site system (see col.7, lines 13-17: "web-based application server") as seen from multiple geographic locations, including locations that are geographically remote from each other and from the web site system (see col.6, lines 62-col.7, line 3: "across a local area network (LAN) that is connected by router to wide area network (WAN)");

(b) concurrently with (a), monitoring a plurality of server resource utilization parameters associated with the web site system (see col.3, lines 25-30: "utilization metric"; and lines 35-38: "application to system utilization") from a computer that is local to the web site system (see col.3, lines 46-48: "allowing their creation to occur as close to their point of origin as possible"); and

(c) automatically analyzing the response times and server resource utilization as monitored in (a) and (b) over a selected time period to evaluate whether a correlation exists between changes in the response times and changes in values of the plurality of server resource utilization parameters (see col.3, lines 35-45: "correlate and associate

transactions occurring at different measurement points”; and col.5, lines 8-17:

“analyzing events” and “further analysis of the correlation data”).

As per **claim 13**, Maccabee further teaches a system for monitoring performance of a deployed transactional server, the system comprising:

a first agent (see col.9, line 27: “with one Agent (505) per computer”) configured to monitor a transactional server over a network, the first agent collecting performance data including response times of the transactional server (see col.3, lines 25-30: “performance (response time)”);

a second agent configured to monitor server resource utilization of the transactional server (see col.3, lines 25-30: “utilization metric”; and lines 35-38: “application to system utilization”), the second agent collecting data on one or more server resource utilization parameters, wherein the second agent monitors server resource utilization over a time period (see col.3, lines 32-35: “since a single event can be measured, the number of transactions per unit time can also be calculated”) in which the first agent monitors the transactional server; and

an analysis component that automatically detects correlation between response times of the transactional server as monitored by the first agent and particular server resource utilization parameters as monitored by the second agent (see col.3, lines 35-45: “correlate and associate transactions occurring at different measurement points”; and col.5, lines 8-17: “analyzing events” and “further analysis of the correlation data”).

As per **claim 20**, Maccabee teaches a method for monitoring the performance of a transactional server, the method comprising:

receiving (see col.5, lines 50-58: “to retrieve selected transactions”) performance data from a plurality of computers geographically distributed across a network (see col.6, lines 62-col.7, line 3: “across a local area network (LAN) that is connected by router to wide area network (WAN)”), the plurality of computers executing transactions on a transactional server while monitoring associated response times (see col.3, lines 25-30: “performance (response time)”);

receiving server resource utilization data (see col.3, lines 25-30: “utilization metric”; and lines 35-38: “application to system utilization”) from a computer that monitors server resource utilization of the transactional server during execution of the transactions by the plurality of computers (see col.5, lines 50-58: “to retrieve selected transactions”); and

automatically analyzing the performance data and the server resource utilization data to detect correlation between the performance of the transactional server and one or more particular server resource utilization parameters (see col.3, lines 35-45: “correlate and associate transactions occurring at different measurement points”; and col.5, lines 8-17: “analyzing events” and “further analysis of the correlation data”).

As per **claim 25**, Maccabee teaches a method of monitoring the operation of a deployed transactional server, the method comprising:

(a) monitoring response times of the transactional server (see col.3, lines 25-30: “performance (response time)”) as seen from multiple geographic locations, including locations that are geographically remote from each other and from the transactional server (see col.6, lines 62-col.7, line 3: “across a local area network (LAN) that is connected by router to wide area network (WAN)”);

(b) concurrently with (a), monitoring a plurality of server resource utilization parameters associated with the transactional server (see col.3, lines 25-30: “utilization metric”; and lines 35-38: “application to system utilization”); and

(c) programmatically evaluating whether a correlation exists between changes in the response times and changes in values of the plurality of server resource utilization parameters over time (see col.3, lines 35-45: “correlate and associate transactions occurring at different measurement points”; and col.5, lines 8-17: “analyzing events” and “further analysis of the correlation data”).

As per **claim 33**, Maccabee teaches a computer-implemented method of analyzing the performance of a server system, the method comprising:

monitoring a first performance parameter of the server system (see col.3, lines 25-30: “performance (response time)”) over a period of time to generate a series of values of the first performance parameter (see col.5, lines 12-17: “aggregation of events”) wherein the server system responds to requests from clients during said period of time (see col.3, lines 32-35: “since a single event can be measured, the number of transactions per unit time can also be calculated”);

monitoring a second performance parameter of the server system (see col.3, lines 25-30: "utilization metric"; and lines 35-38: "application to system utilization") over said period of time to generate a series of values (see col.5, lines 12-17: "aggregation of events") of the second performance parameter (see col.3, lines 32-35: "since a single event can be measured, the number of transactions per unit time can also be calculated"); and

automatically analyzing the values of the first and second performance parameters to evaluate whether a correlation exists between the first performance parameter and the second performance parameter (see col.3, lines 35-45: "correlate and associate transactions occurring at different measurement points"; and col.5, lines 8-17: "analyzing events" and "further analysis of the correlation data").

DEPENDENT:

As per **claim 2**, which depends on claim 1, Maccabee further teaches wherein (a) comprises monitoring the response times from agent computers in at least some of the multiple geographic locations (see col.9, lines 25-27: "The Event Generation (501) component preferably exists on every computer being measured, with one Agent (505) per computer").

As per **claim 3**, which depends on claim 1, Maccabee further teaches wherein (a) comprises passively monitoring traffic (see col.4, lines 47-61: "Sensors monitor for select changes in state") resulting from actual web site users (see col.6, lines 56-58: "a client (100) is used to initiate a request"; and lines 62-64: "request is acted upon

locally”) in at least some of the multiple geographic locations (see col.6, lines 62-col.7, line 3: “across a local area network (LAN) that is connected by router to wide area network (WAN)”).

As per **claim 4**, which depends on claim 1, Maccabee further teaches wherein (a) comprises generating page requests from a data center, and sending the page requests to the web site system via Internet points of presence located in at least some of the multiple geographic locations (see col.6, line 56-col.7, line 36).

As per **claim 5**, which depends on claim 1, Maccabee further teaches wherein (b) comprises monitoring at least one server resource utilization parameter of a web server (see col.7, lines 8-16: “web-based application servers”).

As per **claim 6**, which depends on claim 1, Maccabee further teaches wherein (b) comprises monitoring at least one server resource utilization parameter of an application server (see claim 1 and claim 5 rejections above).

As per **claim 7**, which depends on claim 1, Maccabee further teaches wherein (b) comprises monitoring at least one server resource utilization parameter of a database server (see Fig.1B).

As per **claim 8**, which depends on claim 1, Maccabee further teaches wherein (b) comprises monitoring at least one server resource utilization parameter of a network device (see col.3, lines 39-45: “availability and performance can be assessed at select points along the path”).

As per **claim 9**, which depends on claim 8, Maccabee further teaches wherein the network device is a router (see col.6, line 67-col.7, line 1: “router”)

As per **claim 11**, which depends on claim 1, Maccabee teaches of further comprising applying a statistical algorithm (see col.13, line 18: “algorithm”) to a sequence of response time measurements resulting from (a) to automatically detect degradation in performance (see col.3, lines 54-67).

As per **claim 12**, which depends on claim 11, Maccabee teaches of further comprising processing server resource utilization measurements resulting from (b) to identify at least one server resource parameter having a correlation with the degradation in performance (see claim 1 and claim 11 rejections above).

As per **claim 15**, which depends on claim 13, Maccabee further teaches wherein the first agent sends request messages to the transactional server to measure the response times (see col.5, lines 4-7: “forwards the events they generate to their agents for... and distribution to other system components”).

As per **claim 16**, which depends on claim 13, Maccabee further teaches wherein the first agent passively monitors traffic between client computers and the transactional server to measure the response times (see col.4, lines 47-61: “Sensors monitor for select changes in state”).

As per **claim 17**, Maccabee teaches of further comprising report generating component that generates reports associating the response times with the server resource utilization parameters by displaying the response times and the server resource utilization parameters on a time-synchronized graph to permit a human operator to evaluate correlation detected by the analysis component (see Fig.14 and col.9, lines 2-10).

As per **claim 18**, which depends on claim 13, Maccabee further teaches wherein the second agent is configured to monitor server resource utilization of a database server (see Fig.1B).

As per **claim 19**, which depends on claim 13, Maccabee teaches of further comprising an analysis component that automatically detects correlations between response times and server resource utilization parameters, wherein the analysis component analyzes sequence of values of said response time to automatically detect degradations in the performance of the transactional server (see col.3, lines 54-67).

As per **claim 21**, which depends on claim 20, Maccabee further teaches wherein the performance data includes time stamps for associating the performance data and the server resource utilization data (see col.4, lines 61-63: "event contains a time-stamp").

As per **claim 22**, which depends on claim 20, Maccabee further teaches wherein the server resource utilization data includes central process unit (CPU) utilization data associated with the transactional server (see col.1, lines 21-22: "CPU utilization").

As per **claim 26**, which depends on claim 25, Maccabee further teaches wherein (c) comprises automatically analyzing response time data and server resource utilization data resulting from (a) and (b), respectively (see col.5, lines 8-17: "analyzing events" and "further analysis of the correlation data").

As per **claim 27**, Maccabee teaches of further comprising displaying for a selected time window, a graph of the response time and a graph of at least one of the server resource utilization parameters (see Fig.14 and col.9, lines 2-10).

As per **claim 28**, which depends on claim 26, Maccabee further teaches wherein (c) comprises analyzing response time data and server resource utilization data resulting from (a) and (b) with an automated analysis system that automatically detects correlations (see col.3, lines 35-45: "correlate and associate transactions occurring at different measurement points"; and col.5, lines 8-17: "analyzing events" and "further analysis of the correlation data").

As per **claim 29**, which depends on claim 25, Maccabee further teaches wherein the transactional server is a web site system (see col.7, lines 13-17: "web-based application server").

As per **claim 30**, which depends on claim 1, Maccabee teaches of further comprising, in response to detecting in (c) a correlation between response time degradation and a particular server resource utilization parameter, providing a visual representation of said correlation to a user (see Fig.1D, #400 and col.8, line 58-col.9, line 9)

As per **claims 31, 32, and 38**, which respectively depend on claims 1, 20, and 33, Maccabee further teaches a computer system programmed to perform the method (col.7, lines 38-51: "business transaction's software").

As per **claim 34**, which depends on claim 33, Maccabee further teaches wherein the first performance parameter is a response time parameter (see col.3, lines 25-30: "performance (response time)").

As per **claim 35**, which depends on claim 34, Maccabee further teaches wherein the second performance parameter is a server resource utilization parameter (see col.3, lines 25-30: "utilization metric"; and lines 35-38: "application to system utilization").

As per **claim 36**, which depends on claim 34, Maccabee further teaches wherein the second performance parameter is an operating system resource parameter (see col.1, lines 21-22: "CPU utilization").

As per **claim 37**, which depends on claim 33, Maccabee further teaches wherein the step of automatically analyzing the values of the first and second performance parameters is performed in response to a user action (see col.3, lines 62-67: "enabling customers to select the level of transaction decomposition they wish to view" and col.7, lines 8-12: "transaction initiated within a web browser to purchase an item using the Internet").

As per **claim 39**, Maccabee further teaches a computer program, which embodies the method of Claim 33, represented in computer storage (see col.16, lines 32-37).

4. Claims 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maccabee et al. (US 6,108,700 A) in view of Martija et al. (US 7,039,689 B2).

As per **claim 10**, which depends on claim 8, Maccabee does not explicitly teach wherein the network device is a bridge.

Martija teaches of a network device that a bridge (see col.3, lines 49-55).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Maccabee in view of Martija so that the network device is a bridge. One would be motivated to do so because Maccabee teaches of assessing "availability and performance" at "different measurement points within the path taken" (see col.3, lines 39-45) and one of ordinary skill in the art include bridges, routers, switches, or the like to be employed within a path of data communication.

As per **claim 14**, which depends on claim 13, Maccabee does not explicitly teach wherein the first agent is configured to monitor network hop delays.

Martija teaches of monitoring network hop delays (see col.5, lines 48-51)

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Maccabee in view of Martija to monitor network hop delays. One would be motivated to do so because Maccabee teaches of enabling customers to view which components are introducing delays and faults that adversely affect the transaction (see col.3, lines 65-67).

5. Claim 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maccabee et al. (US 6,108,700 A) in view of Claiborne (US 6,462,833 B1)

As per claim 23, Maccabee does not explicitly teach wherein the server resource utilization data includes memory allocation data.

Claiborne teach of resource utilization data includes memory allocation data (see col.7, lines 15-32: "size (i.e., number of addresses) of the portion of memory that has been allocated for such storage").

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Maccabee in view of Claiborne so that server resource utilization data includes memory allocation data. One would be motivated to do so because Maccabee teaches that the sensor generates "any extra data necessary to uniquely identify the event" (see col.7, lines 54-57).

As per claim 24, which depends on claim 20, Maccabee does not explicitly teach of server resource utilization data includes at least one of the following: hits per second data, requests queued data, current connections data, connection attempts data, or disk utilization data.

Claiborne teach of server resource utilization data includes at least one of the following: hits per second data, requests queued data, current connections data, connection attempts data, or disk utilization data (see col.7, lines 15-32: "extent of memory allocation... communications traffic").

One would be motivated to do so because Maccabee teaches that the sensor generates "any extra data necessary to uniquely identify the event" (see col.7, lines 54-57).

Response to Arguments

6. Applicant's arguments presented in the Appeal Brief filed on August 8, 2006 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Claims 1-39 have been rejected and remain pending.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Y. Won whose telephone number is 571-272-3993. The examiner can normally be reached on M-Th: 7AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2155

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael Won

A handwritten signature in black ink, appearing to read "Michael Won", with a stylized flourish at the end.

October 13, 2006